

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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CIVIL ACTION NO. C-1-00-869

MARK R. HOOP and
LISA J. HOOP

PLAINTIFFS/
COUNTERCLAIM DEFENDANTS

V. MOTION FOR ORDER AWARDING ATTORNEY'S FEES

(proposed order)
attached

JEFFREY W. HOOP, STEPHEN E. HOOP, and
HOOPSTERS ACCESSORIES, INC.

DEFENDANTS/
COUNTERCLAIM PLAINTIFFS

Defendants/Counterclaim Plaintiffs, Jeffrey W. Hoop, Stephen E. Hoop, and Hoopsters Accessories, Inc. (collectively "Defendants"), by counsel, moves the Court for an Order awarding Defendants their attorney's fees. As grounds for this Motion, Defendants state:

1. Pursuant to 35 U.S.C. §285, "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party."
2. Exceptional cases are those in which conduct of party against whom fees are awarded is unfair, vexatious, or involves bad faith or other equitable consideration which makes it unjust that prevailing party bear burden of his own counsel fees. Plymouth Rubber Co. v. Minnesota Mining & Mfg. Co. (1962, DC Mass) 203 F. Supp. 595, 133 USPQ 173, mod (CA1 Mass) 321 F2d 151, 138 USPQ 344, cert den 375 US 969, 11 L. Ed. 2d 417, 84 S. Ct. 489.
3. Conduct need not be fraudulent. Any wilful act with respect to matter in litigation which would be condemned and pronounced wrongful by honest and fair-minded men is sufficient to make party's hands unclean. Fraud practiced on patent office or vexatious or unjustified

litigation are adequate justification for awarding fees. Thermovac Industries Corp. v. Virtis Co. (1968, DC NY) 159 USPQ 349.

4. There is no abuse of discretion in awarding attorney's fees against losing party in patent infringement action where there was deliberate and wilful infringement based upon and made possible by appropriation of plaintiff's trade secrets. Colgate-Palmolive Co. v. Carter Products, Inc., (1956, CA4 Md) 230 F2d 855, 108 USPQ 383, cert den 352 US 843, 1 L. Ed. 2d 59, 77 S. Ct. 43, reh den 352 US 913, 1 L. Ed. 2d. 120, 77 S. Ct. 152.

WHEREFORE, Defendants, by counsel, respectfully request the Court for an Order awarding Defendants their attorney's fees, as specified with more particularity in Exhibit A.

STELLA B. HOUSE,
ATTORNEY-AT-LAW, P.S.C.
Post Office Box 422
Manchester, Kentucky 40962-0422
(606) 598-1485

By: Stella B. House, go.
Stella B. House, J.D.
Counsel for Defendants/
Counterclaim Plaintiffs
Kentucky Bar No. 81805

NOTICE

The foregoing Motion for Order Awarding Attorney's Fees will be heard at the convenience of this Honorable Court.

STELLA B. HOUSE
ATTORNEY AT LAW, P.S.C.

By: Stella B. House, go
Stella B. House, J.D.
Counsel for Defendants/
Counterclaim Plaintiffs

CERTIFICATE OF SERVICE

I certify that an accurate copy of the Motion for Order Awarding Attorney's Fees was sent to Alfred J. Mangels, Esq., Co-Counsel for Plaintiffs/Counterclaim Defendants, 4729 Cornell Road, Cincinnati, Ohio 45241, and Timothy A. Magee, Esq., Co-Counsel for Plaintiffs/Counterclaim Defendants, 130 Sherman Drive, Findlay, Ohio 45840, by United States mail, postage prepaid, on February 19, 2004.

STELLA B. HOUSE
ATTORNEY AT LAW, P.S.C.

By: Stella B. House, go
Stella B. House, J.D.
Counsel for Defendants/
Counterclaim Plaintiffs

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